SI RUSA INN SDN. BHD.

v.

NATIONAL UNION OF HOTEL BAR & RESTAURANT WORKERS & INDUSTRIAL COURT

HIGH COURT MALAYA, KUALA LUMPUR
(APPELLATE AND SPECIAL POWERS DIVISION)
HASHIM YEOP SANI J
[ORIGINATING MOTION NO. A1/81]
13 MAY 1982

ADMINISTRATIVE LAW: *Certiorari - Application to quash order made by Industrial Court - Mandamus - Directing Industrial Court to refer certain questions of law to High Court - Industrial Relations Act 1967, ss. 33A, 56.*

In December 1979, the National Union of Hotel Bar and Restaurant Workers (1st respondent) lodged a complaint to the Industrial Court under s. 56 of the Industrial Relations Act, 1967 for non compliance with a certain article in the collective agreement between the Union and the applicant. At the hearing the company took a preliminary objection on jurisdiction that the said collective agreement had expired with effect from 12 April 1979. The objection was dismissed and on 12 July 1980 the company once again applied to have certain points of law to be referred to High Court under the new s. 33A of the Industrial Court rejected this too, on 6 December 1980.

Therefore the applicant by notice of motion, was seeking for an order of *certiorari* to quash the order made by the Industrial Court and also an order of *mandamus* directing the Industrial Court to refer certain questions of law to High Court. The grounds for the challenge made by the applicant were:

(1) The Industrial Court failed to address its mind to the four considerations under s. 33A of the Act in arriving at its decision; and

(2) The Industrial Court misconstrued its functions under s. 33A.

The four questions sought to be referred under the said section were as follows:

> (1) Whether the Industrial Court has jurisdiction under s. 56 of the Act to hear and adjudicate on a complaint of alleged non-compliance with a Collective Agreement where the subjectmatter of the complaint arose after the termination of the Agreement by the union;
>
> (2) Whether by reason of s. 17(2) of the Act the terms contained in a collective agreement are effective only for the duration of the agreement so that no complaint of non-compliance with its terms can arise after its termination;
>
> (3) Whether on a proper interpretation of Art. 1(c) of the said Collective Agreement, the said Agreement continues to remain in force after one of the parties thereto had terminated the said Agreement with due notice,
>
> (4) Whether, on a co-ordinate interpretation of ss. 56 and 17(2) of the Act and Art. 1(c) of the said Collective Agreement, the Industrial Court had jurisdiction to adjudicate on a complaint of alleged non-compliance with the Collective Agreement, the subject-matter of which arose after the termination of the agreement.

As regards questions (1) and (4) the Industrial Court concluded that there was nothing to doubt the jurisdiction of the Industrial Court to hear a complaint under s. 56 of the Act and that there was nothing to support the view that the Court had erred in jurisdiction, when it

is refused to refer the matter to the High Court. Regarding questions (2) and (3) the Court concluded, basing on an award No. 97/80 that a Collective Agreement continues to be in force until a new collective agreement is drawn and thus refused to refer the questions under s. 33A.

The points to consider in the present application is to examine, whether the Industrial Court has exceeded its function under s. 33A of the Act in exercising its discretion, "or has considered matters which it ought to have considered or for any other reason that rendered its decision a nullity".

Held:

[1] The Industrial Court exceeded its functions under s. 33A of the Act when it went into the merits of the questions and also failed to consider the requirements of the law in arriving as its decision.

[2] The Industrial Court had no jurisdiction whatsoever to consider an application for reference in respect of an order made under s. 56 of the Act. There was a total want of jurisdiction and the order of the Industrial Court was void and cannot be validated either by consent or acquiescence.

[Application for an order of certiorari granted and an order for mandamus dismissed. No order as to costs.]

Legislation referred to:
Industrial Relations Act 1967, ss. 33A, 56

For the applicant - C.V. Das
For the respondent - D.P. Xavier

(Digest Form Only)

Also found at [1982] CLJ 262